

Senate Study Bill 1270

SENATE FILE _____
BY (PROPOSED COMMITTEE ON COMMERCE
BILL BY CO=CHAIRPERSONS
BEHN AND WARNSTADT)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation and supervision of title
2 insurance agents, to the sale of title insurance, providing
3 for penalties, and providing for effective and applicability
4 dates.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 3036SC 81
7 av/pj/5

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1 1 Section 1. NEW SECTION. 515H.1 SHORT TITLE.
1 2 1. This chapter shall be known as the "Iowa Title
1 3 Insurance Agents Act".
1 4 2. The purpose of this chapter is to provide the state of
1 5 Iowa with a comprehensive body of law for the effective
1 6 regulation and supervision of title insurance agents.
1 7 Sec. 2. NEW SECTION. 515H.2 DEFINITIONS.
1 8 As used in this chapter, unless the context otherwise
1 9 requires:
1 10 1. "Abstract of title" or "abstract" means a written
1 11 history, synopsis, or summary of the recorded instruments
1 12 affecting title to real property.
1 13 2. "Affiliated business" means any portion of a title
1 14 insurance agent's business written in this state that was
1 15 referred to the agent by a producer of title insurance
1 16 business or by an associate of the producer, where the
1 17 producer or associate, or both, have a financial interest in
1 18 the title insurance agent.
1 19 3. "Associate" means any of the following:
1 20 a. A business organized for profit in which a producer of
1 21 title insurance business is a director, officer, partner,
1 22 employee, or owner of a financial interest.
1 23 b. An employee of a producer of title insurance business.
1 24 c. A franchiser or franchisee of a producer of title
1 25 business.
1 26 d. A spouse, parent, or child of a producer of title
1 27 insurance business who is a natural person.
1 28 e. A person, other than a natural person, that controls,
1 29 is controlled by, or is under common control with a producer
1 30 of title insurance business.
1 31 f. A person with whom a producer of title insurance
1 32 business or any associate of the producer of title insurance
1 33 business has an agreement, arrangement, or understanding, or
1 34 pursues a course of conduct, the purpose or effect of which is
1 35 to provide financial benefits to that producer or associate
2 1 for the referral of business.
2 2 4. "Bona fide employee" of the title insurer or title
2 3 insurance agent means an individual who devotes substantially
2 4 all of that individual's time to performing services on behalf
2 5 of a title insurer or title insurance agent and whose
2 6 compensation for these services is in the form of salary or
2 7 its equivalent paid by the title insurer or title insurance
2 8 agent.
2 9 5. "Commissioner" means the commissioner of insurance of
2 10 this state, or the commissioner's representatives, or the
2 11 commissioner, director, or superintendent of insurance in any
2 12 other state.
2 13 6. "Escrow" means a written instrument, money, or other
2 14 item deposited by one person with a depository, escrow agent,

2 15 or escrowee for delivery to another person upon the
2 16 performance of a specified condition or the happening of a
2 17 certain event.

2 18 7. "Financial interest" means a direct or indirect
2 19 interest, legal or beneficial, where the holder is or will be
2 20 entitled to five percent or more of the net profits or net
2 21 worth of the entity in which the interest is held.

2 22 8. "Foreign title insurer" means a title insurer
2 23 incorporated or organized under the laws of any other state of
2 24 the United States, the District of Columbia, or any other
2 25 jurisdiction of the United States.

2 26 9. "Non=United States title insurer" means a title insurer
2 27 incorporated or organized under the laws of any foreign nation
2 28 or any foreign province or territory.

2 29 10. "Producer" means a person, including an officer,
2 30 director, or owner of five percent or more of the equity or
2 31 capital of any person, engaged in this state in the trade,
2 32 business, occupation, or profession of any of the following:

2 33 a. Buying or selling interests in real property.
2 34 b. Making loans secured by interests in real property.
2 35 c. Acting as broker, agent, representative, or attorney of
3 1 a person who buys or sells an interest in real property, or
3 2 who lends or borrows moneys with the interest as security.

3 3 11. "Qualified financial institution" means an institution
3 4 that is all of the following:

3 5 a. Organized or, in the case of a United States branch or
3 6 agency office of a foreign banking organization, licensed
3 7 under the laws of the United States or any state and has been
3 8 granted authority to operate with fiduciary powers.

3 9 b. Regulated, supervised, and examined by federal or state
3 10 authorities having regulatory authority over banks and trust
3 11 companies.

3 12 c. Insured by the appropriate federal entity.

3 13 d. Qualified under any additional rules established by the
3 14 commissioner.

3 15 12. "Referral" means the direction or exercise of any
3 16 power or influence over the direction of title insurance
3 17 business, whether or not the consent or approval of any other
3 18 person is sought or obtained with respect to the referral.

3 19 13. "Security" or "security deposit" means funds or other
3 20 property received by a title insurance agent as collateral to
3 21 secure an indemnitor's obligation under an indemnity agreement
3 22 pursuant to which a title insurer is granted a perfected
3 23 security interest in the collateral in exchange for agreeing
3 24 to provide coverage in a title insurance policy for a specific
3 25 title exception to coverage.

3 26 14. "Title insurance agent" means an authorized person,
3 27 other than a bona fide employee of a title insurer who, on
3 28 behalf of a title insurer, performs any of the following acts,
3 29 in conjunction with the issuance of a title insurance report
3 30 or policy:

3 31 a. Determines insurability and issues title insurance
3 32 reports or policies, or both, based upon the performance or
3 33 review of a search or abstract of title.

3 34 b. Performs one or more of the following functions:

3 35 (1) Collects or disburses premiums, escrow or security
4 1 deposits, or other funds.

4 2 (2) Handles escrow, settlements, or closings.

4 3 (3) Solicits or negotiates title insurance business.

4 4 (4) Records closing documents.

4 5 15. "Title insurance business" or "business of title
4 6 insurance" means engaging in any of the following:

4 7 a. Issuing or offering to issue as an insurer a title
4 8 insurance policy.

4 9 b. Transacting or proposing to transact by a title
4 10 insurance agent any of the following activities when conducted
4 11 or performed in contemplation of or in conjunction with the
4 12 issuance of a title insurance policy:

4 13 (1) Soliciting or negotiating the issuance of a title
4 14 insurance policy.

4 15 (2) Guaranteeing, warranting, or otherwise insuring the
4 16 correctness of title searches for all instruments affecting
4 17 titles to real property, an interest in real property,
4 18 cooperative units, and proprietary leases, and for all liens
4 19 or charges affecting titles to real property, an interest in
4 20 real property, cooperative units, and proprietary leases.

4 21 (3) Handling escrows, settlements, or closings.

4 22 (4) Executing title insurance policies.

4 23 (5) Effecting contracts of reinsurance.

4 24 (6) Abstracting, searching, or examining titles.

4 25 c. Guaranteeing, warranting, or insuring searches or

4 26 examination of title to real property or any interest in real
4 27 property.

4 28 d. Guaranteeing or warranting the status of title as to
4 29 ownership of or liens on real property and personal property
4 30 by any person other than the principals to the transaction.

4 31 e. Doing or proposing to do any business substantially
4 32 equivalent to any of the activities listed in this subsection
4 33 in a manner designed to evade the provisions of this chapter.

4 34 16. "Title insurance policy" means a contract insuring or
4 35 indemnifying owners of, or other persons lawfully interested
5 1 in, real or personal property or any interest in real
5 2 property, against loss or damage arising from any of the
5 3 following conditions existing on or before the initial date of
5 4 policy coverage and not excepted or excluded:

5 5 a. Defects in, or liens or encumbrances on, the insured
5 6 title.

5 7 b. Unmarketability of the insured title.

5 8 c. Invalidity, lack of priority, or unenforceability of
5 9 liens or encumbrances on the stated property.

5 10 d. Lack of legal right of access to the land.

5 11 e. Unenforceability of rights in title to the land.

5 12 17. "Title insurance report" means a preliminary report,
5 13 commitment, or binder issued prior to the issuance of a title
5 14 insurance policy containing the terms, conditions, exceptions,
5 15 and any other matters incorporated by reference under which
5 16 the title insurer is willing to issue its title insurance
5 17 policy.

5 18 18. "Title insurance subagent" means a person, other than
5 19 a bona fide employee of a title insurance agent who, on behalf
5 20 of the title insurance agent, determines insurability and
5 21 issues title insurance reports or policies, or both, based
5 22 upon the performance or review of a search or abstract of
5 23 title, except that the performance of actual legal services
5 24 such as title examination or closing services by a licensed
5 25 attorney does not render the attorney a subagent.

5 26 19. "Title insurer" means a company organized under the
5 27 laws of this state for the purpose of transacting the business
5 28 of title insurance and any foreign title insurer or non=United
5 29 States title insurer licensed in this state to transact the
5 30 business of title insurance.

5 31 20. "Underwrite" means the authority to accept or reject
5 32 risk on behalf of a title insurer.

5 33 Sec. 3. NEW SECTION. 515H.3 LICENSING REQUIREMENTS.

5 34 1. A person shall not act in the capacity of a title
5 35 insurance agent, and a title insurer shall not contract with
6 1 any person to act in the capacity of a title insurance agent
6 2 with respect to risks located in this state unless the person
6 3 is licensed as a title insurance agent in this state.

6 4 2. A title insurance agent licensed in this state shall do
6 5 all of the following:

6 6 a. Refrain from using the word "insurer" or "underwriter"
6 7 or similar term in the name of the title insurance agency.

6 8 b. Provide, in a timely fashion, each title insurer with
6 9 which it places business any information the title insurer
6 10 requests in order to comply with reporting requirements of the
6 11 commissioner.

6 12 3. The commissioner shall require a title insurance agent
6 13 and any designee of the title insurance agent performing title
6 14 searches to maintain, for the benefit of the title insurer, in
6 15 amounts commensurate with the agent's average exposure, under
6 16 terms and conditions, and from insurers acceptable to the
6 17 commissioner, all of the following:

6 18 a. An error and omission policy which includes coverage
6 19 for an agent's delegation of any of the agent's functions.

6 20 b. Fidelity coverage if the agent handles escrow or
6 21 security deposits.

6 22 The commissioner may adopt rules pursuant to chapter 17A
6 23 specifying acceptable alternatives to the requirements of this
6 24 subsection. The availability of closing or settlement
6 25 protection shall not be construed to be an acceptable
6 26 alternative to the requirements of this subsection.

6 27 Sec. 4. NEW SECTION. 515H.4 INSPECTION OF BOOKS AND
6 28 RECORDS.

6 29 The commissioner may, during normal business hours,
6 30 examine, audit, and inspect any and all books and records
6 31 required to be maintained by a title insurance agent under
6 32 this chapter.

6 33 Sec. 5. NEW SECTION. 515H.5 PROHIBITIONS RELATING TO
6 34 REFERRALS.

6 35 A title insurance agent or other person shall not provide
7 1 or receive, directly or indirectly, any consideration for the

7 2 referral of title insurance business or escrow or other
7 3 services provided by a title insurance agent unless goods or
7 4 services are provided in conjunction with such a referral.
7 5 Sec. 6. NEW SECTION. 515H.6 AFFILIATED BUSINESS
7 6 PROVISIONS.
7 7 1. Whenever business constitutes affiliated business,
7 8 prior to commencing such a business transaction, the title
7 9 insurance agent shall ensure that the title insurance agent's
7 10 customer has been provided with disclosure of the existence of
7 11 the affiliated business arrangement and a written estimate of
7 12 the charge or range of charges generally made for the title
7 13 insurance business services provided by the title insurance
7 14 agent.
7 15 2. The commissioner may adopt rules pursuant to chapter
7 16 17A requiring title insurance agents to record and report the
7 17 title insurance agent's owners and all of the title insurance
7 18 agent's ownership interests in other persons or businesses,
7 19 and to record and report material transactions between the
7 20 title insurance agents and other persons or businesses.
7 21 3. This chapter shall not be construed as prohibiting
7 22 affiliated business arrangements in the provision of title
7 23 insurance business if all of the following apply:
7 24 a. The title insurance agent or party making a referral
7 25 constituting affiliated business, at or prior to the time of
7 26 the referral, discloses the arrangement and, in connection
7 27 with the referral, provides the person being referred with a
7 28 written estimate of the charge or range of charges likely to
7 29 be assessed, and otherwise complies with the disclosure
7 30 obligations of this section.
7 31 b. The person being referred is not required to use a
7 32 specified title insurance agent or title insurer.
7 33 c. The only thing of value that is received by the title
7 34 insurance agent or party making the referral, other than
7 35 payments otherwise permitted, is a return on an ownership
8 1 interest. For purposes of this subsection, the terms
8 2 "required use" and "return on ownership interest" have the
8 3 meanings accorded to them under the federal Real Estate
8 4 Settlement Procedures Act, 12 U.S.C. } 2607, et seq., and
8 5 Regulation X, 24 C.F.R. pt. 3500.
8 6 Sec. 7. NEW SECTION. 515H.7 FAVORED AGENT OR TITLE
8 7 INSURER.
8 8 A title insurance agent shall not participate in any
8 9 transaction in which a producer or other person requires,
8 10 directly or indirectly, or through a trustee, director,
8 11 officer, agent, employee, or affiliate, as a condition,
8 12 agreement, or understanding to providing, selling, or
8 13 furnishing any other person a loan, loan extension, credit,
8 14 sale, property, contract, lease, or service, that the other
8 15 person must place a title insurance policy of any kind with a
8 16 particular title insurer or through a particular title
8 17 insurance agent.
8 18 Sec. 8. NEW SECTION. 515H.8 REQUIRED PROVISIONS OF
8 19 UNDERWRITING CONTRACT WITH TITLE INSURER.
8 20 A person acting in the capacity of a title insurance agent
8 21 shall not place business with a title insurer unless there is
8 22 in force a written contract between the title insurance agent
8 23 and the title insurer which sets forth the responsibilities of
8 24 each party to the contract. Where the title insurance agent
8 25 and the title insurer share responsibility for a particular
8 26 function, the contract shall specify the division of such
8 27 responsibilities between them and shall contain language which
8 28 provides for all of the following:
8 29 1. The title insurer may terminate the contract upon
8 30 written notice of any of the following circumstances:
8 31 a. Fraud, insolvency, appointment of a receiver or
8 32 conservator, bankruptcy, cancellation of the title insurance
8 33 agent's license or permit to do business, or the commencement
8 34 of legal proceedings by the state of domicile of the title
8 35 insurance agent, which, if successful, would lead to
9 1 cancellation of the title insurance agent's license to do
9 2 business.
9 3 b. Material breach of any provisions of the contract.
9 4 c. Notice of cancellation has been provided in accordance
9 5 with contract termination requirements.
9 6 2. Upon receiving notice of termination, the title
9 7 insurance agent shall immediately discontinue all title
9 8 insurance business activities on behalf of that title insurer.
9 9 This subsection is not intended to relieve the title insurance
9 10 agent or title insurer of any other contractual obligation.
9 11 3. The title insurance agent shall render accounts to the
9 12 title insurer detailing all transactions and shall remit all

9 13 funds due under the underwriting contract to the title insurer
9 14 within the time specified by the underwriting contract.

9 15 4. All funds collected for the account of a title insurer
9 16 by a title insurance agent shall be held in a fiduciary
9 17 capacity in a bank that is a qualified financial institution.

9 18 5. At the title insurer's request, the title insurance
9 19 agent, its successor in interest, transferee, or receiver
9 20 shall provide access to and the right to copy all escrow files
9 21 and underwriting files involving a transaction in which a
9 22 title insurance report or policy has been or is to be issued.

9 23 6. Separate records of business written by the title
9 24 insurance agent shall be maintained for each title insurer.
9 25 The title insurer shall have access to and a right to copy all
9 26 accounts and records related to its business in a form
9 27 acceptable to the title insurer. The commissioner shall have
9 28 access to all books, bank accounts, and records of the title
9 29 insurance agent in a form usable to the commissioner. The
9 30 records shall be retained according to section 515H.10.

9 31 7. An underwriting contract with a title insurer shall not
9 32 be assigned in whole or in part by the title insurance agent
9 33 without the express written consent of the title insurer.

9 34 8. The underwriting contract shall contain appropriate
9 35 guidelines, relating to all of the following:

10 1 a. The basis of the rates to be charged.
10 2 b. The types of risks which may be underwritten.
10 3 c. Maximum limits of liability.
10 4 d. Territorial limitations.
10 5 e. Title searches and examinations.
10 6 f. Underwriting.

10 7 9. The title insurance agent shall immediately report and
10 8 forward to the title insurer all title-related escrow claims
10 9 and title claims reported to the title insurance agent by a
10 10 policyholder or another person. However, if the underwriting
10 11 contract permits the title insurance agent to settle claims on
10 12 behalf of the title insurer, all of the following shall apply:

10 13 a. A copy of the claim file shall be sent to the title
10 14 insurer at its request or as soon as any of the following
10 15 become known:

10 16 (1) The claim has the potential to exceed an amount
10 17 established by the title insurer.
10 18 (2) The claim involves a coverage dispute.
10 19 (3) The claim may exceed the title insurance agent's
10 20 settlement authority on claims.
10 21 (4) The claim is open for more than six months.
10 22 (5) The claim is closed by payment exceeding an amount
10 23 established by the title insurer.

10 24 b. All title and title-related escrow claims files settled
10 25 by the title insurance agent shall be the property of the
10 26 title insurer.

10 27 c. Any settlement authority granted to the title insurance
10 28 agent may be terminated immediately upon the title insurer's
10 29 written notice to the title insurance agent or upon the
10 30 termination of the underwriting contract. The title insurer
10 31 may suspend the settlement authority during the pendency of a
10 32 dispute regarding the cause for termination. This paragraph
10 33 is not intended to relieve the title insurance agent or title
10 34 insurer of any other contractual obligation.

10 35 10. If electronic claims files exist, the underwriting
11 1 contract must address the immediate transmission of the data
11 2 in the claims files.

11 3 11. The title insurance agent shall not bind reinsurance
11 4 or retrocessions on behalf of the title insurer.

11 5 12. The underwriting contract shall include specific terms
11 6 of a title insurance agent's compensation.

11 7 13. The title insurance agent shall maintain an inventory
11 8 of all policy forms or policy numbers assigned to the title
11 9 insurance agent by the title insurer.

11 10 14. The title insurance agent shall annually, concurrent
11 11 with the renewal date of the underwriting contract, furnish
11 12 the title insurer with proof that the title insurance agent is
11 13 in compliance with section 515H.3.

11 14 15. The title insurance agent shall provide the title
11 15 insurer with access and the right to copy all accounts and
11 16 records maintained by the title insurance agent with respect
11 17 to business placed with the title insurer.

11 18 Sec. 9. NEW SECTION. 515H.9 CONDITIONS FOR PROVIDING
11 19 ESCROW, CLOSING, OR SETTLEMENT SERVICES, AND MAINTAINING
11 20 ESCROW AND SECURITY DEPOSIT ACCOUNTS.

11 21 A title insurance agent may operate as an escrow, security,
11 22 settlement, or closing agent, provided all of the following
11 23 apply:

11 24 1. All funds deposited with the title insurance agent in
11 25 connection with an escrow, settlement, closing, or security
11 26 deposit shall be submitted for collection to or deposited in a
11 27 separate fiduciary trust account or accounts in a qualified
11 28 financial institution no later than the close of the next
11 29 business day after receipt of the funds, in accordance with
11 30 all of the following requirements:

11 31 a. The funds shall be the property of the person or
11 32 persons entitled to them under the provisions of the escrow,
11 33 settlement, security deposit, or closing agreement, and shall
11 34 be segregated for each depository by designating escrow,
11 35 settlement, security deposit, or closing funds in the records
12 1 of the title insurance agent in a manner that permits the
12 2 funds to be identified on an individual basis.

12 3 b. The funds shall be applied only in accordance with the
12 4 terms of the individual instructions or agreements under which
12 5 the funds were accepted.

12 6 2. Funds held in an escrow account shall be disbursed only
12 7 pursuant to a written instruction or agreement specifying how
12 8 and to whom such funds may be disbursed.

12 9 3. Funds held in a security deposit account shall be
12 10 disbursed only pursuant to a written agreement specifying all
12 11 of the following:

12 12 a. What actions the indemnitor shall take to satisfy the
12 13 indemnitor's obligation under the agreement.

12 14 b. The duties of the title insurance agent with respect to
12 15 disbursements of the funds held, including a requirement to
12 16 maintain evidence of the disbursements before any balance may
12 17 be paid over to the depositing party, or the depositing
12 18 party's designee.

12 19 c. Any other provisions the commissioner may require.

12 20 4. A disbursement may be made out of an escrow,
12 21 settlement, or closing account only if deposits in amounts at
12 22 least equal to the disbursement have first been made directly
12 23 to the account against which the disbursement will be made,
12 24 and if the deposits are in one of the following forms:

12 25 a. Cash.

12 26 b. Wire transfers such that the funds are unconditionally
12 27 received by the title insurance agent or the title insurance
12 28 agent's depository.

12 29 c. Cashier's checks, certified checks, bank money orders,
12 30 and teller's checks issued by a federally insured financial
12 31 institution and unconditionally held by the title insurance
12 32 agent.

12 33 d. United States treasury checks, federal reserve bank
12 34 checks, federal home loan bank checks, and state of Iowa
12 35 warrants.

13 1 e. Personal checks up to one thousand dollars.

13 2 For the purposes of this subsection, "federally insured
13 3 financial institution" means an institution in which monetary
13 4 deposits are insured by the federal deposit insurance
13 5 corporation or national credit union administration.

13 6 5. If the title insurance agent is appointed by two or
13 7 more title insurers and maintains fiduciary trust accounts in
13 8 connection with providing escrow or closing settlement
13 9 services, the title insurance agent shall allow each title
13 10 insurer reasonable access to the accounts and all supporting
13 11 account information in order to ascertain the safety and
13 12 security of the funds held by the title insurance agent.

13 13 6. This chapter does not prohibit the recording of
13 14 documents prior to the time funds are available for
13 15 disbursement with respect to any transaction involving real
13 16 property.

13 17 7. This section is not intended to amend, alter, or
13 18 supersede other sections of this chapter, or the laws of this
13 19 state or the United States, regarding an escrow holder's
13 20 duties and obligations.

13 21 Sec. 10. NEW SECTION. 515H.10 RECORD RETENTION
13 22 REQUIREMENTS.

13 23 A title insurance agent shall maintain sufficient records
13 24 of the affairs of the title insurance agent, including its
13 25 escrow operations and escrow trust accounts, so that the
13 26 commissioner may adequately ensure that the title insurance
13 27 agent is in compliance with all provisions of this chapter.
13 28 The commissioner may prescribe the specific record entries and
13 29 documents to be kept, and the length of time for which the
13 30 records must be maintained.

13 31 Sec. 11. NEW SECTION. 515H.11 APPLICATION OF OTHER
13 32 INSURANCE CODE SECTIONS TO TITLE INSURANCE AGENTS.

13 33 A title insurance agent shall be subject to all other
13 34 applicable provisions of the insurance code applying to

13 35 insurance and insurance producers which are not inconsistent
14 1 with the purposes and provisions of this chapter.
14 2 Sec. 12. NEW SECTION. 515H.12 RULES AND ORDERS.
14 3 The commissioner may adopt rules pursuant to chapter 17A
14 4 and issue orders as may be necessary for the effective
14 5 administration of this chapter.
14 6 Sec. 13. NEW SECTION. 515H.13 PENALTIES AND LIABILITIES.
14 7 1. If the commissioner determines that a title insurance
14 8 agent or any other person has violated this chapter, any rule
14 9 adopted pursuant to this chapter, or any order issued under
14 10 this chapter, after notice and opportunity to be heard, the
14 11 commissioner may order any or all of the following:
14 12 a. A civil penalty not exceeding one hundred dollars for
14 13 each violation.
14 14 b. Revocation or suspension of the title insurance agent's
14 15 license.
14 16 2. If an order of rehabilitation or liquidation of the
14 17 title insurer has been entered pursuant to chapter 507C, and
14 18 the receiver appointed under that order determines that the
14 19 title insurance agent or any other person has not complied
14 20 with the requirements of this chapter, or any related rule, or
14 21 order, and the title insurer has suffered resulting loss or
14 22 damage, the receiver may maintain a civil action for recovery
14 23 of damages or other appropriate sanctions for the benefit of
14 24 the title insurer and its policyholders and creditors.
14 25 3. This section shall not affect the right of the
14 26 commissioner to impose any other civil penalties provided for
14 27 in the insurance code.
14 28 4. This chapter is not intended to and shall not in any
14 29 manner limit or restrict the rights of policyholders,
14 30 claimants, and creditors.
14 31 Sec. 14. NEW SECTION. 515H.14 VIOLATIONS OF THE REAL
14 32 ESTATE SETTLEMENT PROCEDURES ACT.
14 33 The commissioner or attorney general may bring an action in
14 34 a court of competent jurisdiction to enjoin violations of the
14 35 federal Real Estate Settlement Procedures Act, 12 U.S.C. }
15 1 2607, et seq.
15 2 Sec. 15. NEW SECTION. 515I.1 TITLE AND PURPOSE.
15 3 1. This chapter shall be known as the "Iowa Title Insurers
15 4 Act".
15 5 2. The purpose of this chapter is to provide for the
15 6 effective regulation and supervision of title insurance and
15 7 insurers licensed to write title insurance in this state.
15 8 Sec. 16. NEW SECTION. 515I.2 APPLICATION OF CHAPTER AND
15 9 CONSTRUCTION WITH OTHER LAWS.
15 10 1. This chapter shall apply to all persons engaged in the
15 11 business of title insurance in this state.
15 12 2. A title insurer shall be subject to all other
15 13 applicable provisions of the insurance code applying to
15 14 insurance and insurance companies which are not inconsistent
15 15 with the purposes and provisions of this chapter.
15 16 Sec. 17. NEW SECTION. 515I.3 DEFINITIONS.
15 17 As used in this chapter, unless the context otherwise
15 18 requires:
15 19 1. "Abstract of title" or "abstract" means a written
15 20 history, synopsis, or summary of the recorded instruments
15 21 affecting the title to real property.
15 22 2. "Affiliate" means a specific person that directly, or
15 23 indirectly through one or more intermediaries, controls, or is
15 24 controlled by or is under common control with, the person
15 25 specified.
15 26 3. "Bona fide employee" of a title insurer or title
15 27 insurance agent means an individual who devotes substantially
15 28 all of that individual's time to performing services on behalf
15 29 of a title insurer or title insurance agent and whose
15 30 compensation for those services is in the form of salary or
15 31 its equivalent paid by the title insurer or title insurance
15 32 agent.
15 33 4. "Commissioner" means the commissioner of insurance of
15 34 this state, or the commissioner's representatives, or the
15 35 commissioner, director, or superintendent of insurance in any
16 1 other state.
16 2 5. "Control", "controlling", "is controlled by", or "is
16 3 under common control with" means the direct or indirect power
16 4 to determine the management and policies of a person, whether
16 5 through the ownership of voting securities, by a contract
16 6 other than a commercial contract for goods or nonmanagement
16 7 services, or otherwise, unless the power is the result of an
16 8 official position or corporate office held by the person
16 9 exercising the power. Control is presumed to exist if a
16 10 person, directly or indirectly, owns, controls, holds the

16 11 power to vote, or holds proxies representing ten percent or
16 12 more of the voting securities of another person. This
16 13 presumption may be rebutted by a showing that control does not
16 14 exist in fact. The commissioner may determine, after
16 15 furnishing all persons in interest notice and opportunity to
16 16 be heard and making specific findings of fact to support the
16 17 determination, that control exists in fact, notwithstanding
16 18 the absence of a presumption to that effect.

16 19 6. "Direct operations" means that portion of a title
16 20 insurer's operations which are attributable to business
16 21 written by a bona fide employee.

16 22 7. "Escrow" means a written instrument, money, or other
16 23 item deposited by one person with a depository, escrow agent,
16 24 or escrowee for delivery to another person upon the
16 25 performance of a specified condition or the happening of a
16 26 certain event.

16 27 8. "Escrow, settlement or closing fee" means the
16 28 consideration for supervising or handling the actual
16 29 execution, delivery, or recording of transfer and lien
16 30 documents, for disbursing funds, and for delivering items
16 31 deposited in escrow.

16 32 9. "Foreign title insurer" means a title insurer
16 33 incorporated or organized under the laws of any other state of
16 34 the United States, the District of Columbia, or any other
16 35 jurisdiction of the United States.

17 1 10. "Net retained liability" means the total liability
17 2 retained by a title insurer for a single risk, after taking
17 3 into account any ceded liability and collateral, which is
17 4 acceptable to the commissioner to be maintained by the title
17 5 insurer.

17 6 11. "Non=United States title insurer" means a title
17 7 insurer incorporated or organized under the laws of any
17 8 foreign nation or any foreign province or territory.

17 9 12. "Producer" means a person, including an officer,
17 10 director or owner of five percent or more of the equity or
17 11 capital of any person, engaged in this state in the trade,
17 12 business, occupation, or profession of any of the following:
17 13 a. Buying or selling interests in real property.
17 14 b. Making loans secured by interests in real property.
17 15 c. Acting as broker, agent, representative, or attorney of
17 16 a person who buys or sells an interest in real property, or
17 17 who lends or borrows money with the interest as security.

17 18 13. "Qualified financial institution" means an institution
17 19 that is all of the following:

17 20 a. Organized or, in the case of a United States branch or
17 21 agency office of a foreign banking organization, licensed
17 22 under the laws of the United States or any state and has been
17 23 granted authority to operate with fiduciary powers.

17 24 b. Regulated, supervised, and examined by federal or state
17 25 authorities having regulatory authority over banks and trust
17 26 companies.

17 27 c. Insured by the appropriate federal entity.

17 28 d. Qualified under any additional rules established by the
17 29 commissioner.

17 30 14. "Referral" means the direction or exercise of any
17 31 power or influence over the direction of title insurance
17 32 business, whether or not the consent or approval of any other
17 33 person is sought or obtained with respect to the referral.

17 34 15. "Security" or "security deposit" means funds or other
17 35 property received by a title insurer as collateral to secure
18 1 an indemnitor's obligation under an indemnity agreement
18 2 pursuant to which a title insurer is granted a perfected
18 3 security interest in the collateral in exchange for agreeing
18 4 to provide coverage in a title insurance policy for a specific
18 5 title exception to coverage.

18 6 16. "Subsidiary" means an affiliate controlled by a person
18 7 directly or indirectly through one or more intermediaries.

18 8 17. "Title insurance agent" means an authorized person,
18 9 other than a bona fide employee of the title insurer who, on
18 10 behalf of the title insurer, performs the following acts, in
18 11 conjunction with the issuance of a title insurance report or
18 12 policy:

18 13 a. Determines insurability and issues title insurance
18 14 reports or policies, or both, based upon the performance or
18 15 review of a search or abstract of title.

18 16 b. Performs one or more of the following functions:

18 17 (1) Collects or disburses premiums, escrow or security
18 18 deposits, or other funds.

18 19 (2) Handles escrows, settlements, or closings.

18 20 (3) Solicits or negotiates title insurance business.

18 21 (4) Records closing documents.

18 22 18. "Title insurance business" or "business of title
18 23 insurance" means engaging in any of the following:
18 24 a. Issuing or offering to issue as an insurer a title
18 25 insurance policy.
18 26 b. Transacting or proposing to transact by a title insurer
18 27 any of the following activities when conducted or performed in
18 28 contemplation of or in conjunction with the issuance of a
18 29 title insurance policy:
18 30 (1) Soliciting or negotiating the issuance of a title
18 31 insurance policy.
18 32 (2) Guaranteeing, warranting, or otherwise insuring the
18 33 correctness of title searches for all instruments affecting
18 34 titles to real property, an interest in real property,
18 35 cooperative units and proprietary leases, and for all liens or
19 1 charges affecting titles to real property, an interest in real
19 2 property, cooperative units, and proprietary leases.
19 3 (3) Handling escrows, settlements, or closings.
19 4 (4) Executing title insurance policies.
19 5 (5) Effecting contracts of reinsurance.
19 6 (6) Abstracting, searching, or examining titles.
19 7 c. Guaranteeing, warranting, or insuring searches or
19 8 examinations of title to real property or any interest in real
19 9 property.
19 10 d. Guaranteeing or warranting the status of title as to
19 11 ownership of or liens on real property and personal property
19 12 by any person other than the principals to the transaction.
19 13 e. Doing or proposing to do any business substantially
19 14 equivalent to any of the activities listed in this subsection
19 15 in a manner designed to evade the provisions of this chapter.
19 16 19. "Title insurance policy" means a contract insuring or
19 17 indemnifying owners of, or other persons lawfully interested
19 18 in, real or personal property or any interest in real
19 19 property, against loss or damage arising from any of the
19 20 following conditions existing on or before the initial date of
19 21 policy coverage and not excepted or excluded:
19 22 a. Defects in, or liens or encumbrances on, the insured
19 23 title.
19 24 b. Unmarketability of the insured title.
19 25 c. Invalidity, lack of priority, or unenforceability of
19 26 liens or encumbrances on the stated property.
19 27 d. Lack of legal right of access to the land.
19 28 e. Unenforceability of rights in title to the land.
19 29 20. "Title insurance report" means a preliminary report,
19 30 commitment, or binder issued prior to the issuance of a title
19 31 insurance policy containing the terms, conditions, exceptions,
19 32 and any other matters incorporated by reference under which
19 33 the title insurer is willing to issue its title insurance
19 34 policy.
19 35 21. "Title insurer" means a company organized under the
20 1 laws of this state for the purpose of transacting the business
20 2 of title insurance and any foreign title insurer or non=United
20 3 States title insurer licensed in this state to transact the
20 4 business of title insurance.
20 5 22. "Title plant" means a set of records consisting of
20 6 documents, maps, surveys, or entries affecting title to real
20 7 property or any interest in or encumbrance on the property,
20 8 which has been filed or recorded in the jurisdiction for which
20 9 the title plant is established or maintained.
20 10 Sec. 18. NEW SECTION. 515I.4 CORPORATE FORM REQUIRED.
20 11 A person other than a domestic, foreign, or non=United
20 12 States title insurer organized on the stock plan and licensed
20 13 in this state as a title insurer shall not issue a title
20 14 insurance policy or otherwise transact the business of title
20 15 insurance in this state.
20 16 Sec. 19. NEW SECTION. 515I.5 AUTHORIZED ACTIVITIES OF
20 17 TITLE INSURERS.
20 18 Subject to the exceptions and restrictions contained in
20 19 this chapter, a title insurer may do all of the following:
20 20 1. Transact only title insurance business.
20 21 2. Reinsure title insurance policies.
20 22 3. Perform ancillary activities, unless prohibited by the
20 23 commissioner, including examining title to real property and
20 24 any interest in real property and procuring and furnishing
20 25 related information about real property and relevant personal
20 26 property, when not in contemplation of, or in conjunction
20 27 with, the issuance of a title insurance policy.
20 28 Sec. 20. NEW SECTION. 515I.6 LIMITATIONS ON POWERS.
20 29 1. An insurer that transacts or is licensed to transact
20 30 any class, type, or kind of business other than title
20 31 insurance shall not be eligible for the issuance or renewal of
20 32 a license to transact title insurance business in this state

20 33 and shall not transact, underwrite, or issue title insurance
20 34 in this state.

20 35 2. A title insurer shall not engage in the business of
21 1 guaranteeing the payment of principal or interest of bonds or
21 2 mortgages.

21 3 3. a. Notwithstanding subsection 1, and to the extent
21 4 such coverage is lawful within this state, a title insurer may
21 5 issue closing or settlement protection to a proposed insured
21 6 upon request if the title insurer issues a preliminary report,
21 7 binder, or title insurance policy to a proposed insured. Such
21 8 closing or settlement protection shall conform to the terms of
21 9 coverage and format required by the commissioner and may
21 10 indemnify a proposed insured only against loss of settlement
21 11 funds because of the following acts of a title insurer's named
21 12 title insurance agent:

21 13 (1) Theft of settlement funds.

21 14 (2) Acquiescence in the failure of a proposed insured to
21 15 comply with written closing instructions relating to title
21 16 insurance coverage by the title insurance agent.

21 17 b. A title insurer shall not provide any other coverage
21 18 which purports to indemnify against improper acts or omissions
21 19 of a person with regard to escrow, settlement, or closing
21 20 services.

21 21 Sec. 21. NEW SECTION. 515I.7 PAID=UP CAPITAL AND SURPLUS
21 22 REQUIREMENTS.

21 23 Before being licensed to transact title insurance business
21 24 in this state, a title insurer shall establish and maintain a
21 25 minimum of not less than five million dollars of capital and
21 26 surplus, the entire amount of which shall be fully paid-up in
21 27 cash and invested as provided by law.

21 28 Sec. 22. NEW SECTION. 515I.8 SINGLE RISK LIMIT.

21 29 1. The net retained liability of a title insurer for a
21 30 single risk in regard to property, whether assumed directly or
21 31 as reinsurance, shall not exceed the aggregate of fifty
21 32 percent of surplus as regards policyholders plus the statutory
21 33 premium reserve less the insurer's investment in title plants,
21 34 all as shown in the most recent annual statement of the
21 35 insurer on file with the commissioner.

22 1 2. For purposes of this chapter:

22 2 a. A single risk shall be the insured amount of any title
22 3 insurance policy, except that, where two or more title
22 4 insurance policies are issued simultaneously covering
22 5 different estates in the same real property, a single risk
22 6 shall be the sum of the insured amounts of all the title
22 7 insurance policies.

22 8 b. A policy under which a claim payment reduces the amount
22 9 of insurance under one or more other title insurance policies
22 10 shall be included in computing the single risk sum only to the
22 11 extent that its amount exceeds the aggregate amount of the
22 12 policy or policies whose amount of insurance is reduced.

22 13 Sec. 23. NEW SECTION. 515I.9 ADMITTED ASSET STANDARDS.

22 14 In determining the financial condition of a title insurer
22 15 doing business under this chapter, the general investment
22 16 provisions of section 515.35 shall apply, except that an
22 17 investment in a title plant or plants in an amount equal to
22 18 the actual cost shall be allowed as an admitted asset for
22 19 title insurers. The aggregate amount of the investment shall
22 20 not exceed the lesser of twenty percent of admitted assets or
22 21 forty percent of surplus to policyholders, as shown on the
22 22 most recent annual statement of the title insurer on file with
22 23 the commissioner.

22 24 Sec. 24. NEW SECTION. 515I.10 RESERVES.

22 25 In determining the financial condition of a title insurer
22 26 doing business under this chapter, the general provisions of
22 27 the insurance code requiring the establishment of reserves
22 28 sufficient to cover all known and unknown liabilities,
22 29 including allocated and unallocated loss adjustment expenses,
22 30 shall apply, except that a title insurer shall establish and
22 31 maintain the following:

22 32 1. A known claim reserve in an amount estimated to be
22 33 sufficient to cover all unpaid losses, claims, and allocated
22 34 loss adjustment expenses arising under title insurance
22 35 policies, guaranteed certificates of title, guaranteed
23 1 searches and guaranteed abstracts of title, and all unpaid
23 2 losses, claims and allocated loss adjustment expenses for
23 3 which the title insurer may be liable, and for which the
23 4 insurer has received notice by or on behalf of the insured,
23 5 holder of a guarantee, or escrow or security depositor.

23 6 2. A statutory or unearned premium reserve consisting of
23 7 one of the following:

23 8 a. The amount of statutory or unearned premium reserve

23 9 required by the laws of the domiciliary state of the insurer
 23 10 if the insurer is a foreign title insurer or a non=United
 23 11 States title insurer.
 23 12 b. If the insurer is a domestic insurer in this state, a
 23 13 statutory or unearned premium reserve consisting of the
 23 14 following:
 23 15 (1) The amount of the statutory or unearned premium or
 23 16 reinsurance reserve required on the effective date of this
 23 17 Act, which amount shall be released in accordance with the law
 23 18 in effect at the time such sums were added to the reserve.
 23 19 (2) Out of total charges for policies of title insurance
 23 20 written or assumed commencing with the effective date of this
 23 21 Act, and until December 31, 2006, which shall be added to and
 23 22 set aside in this reserve in an amount equal to six percent of
 23 23 the sum of the following items set forth in the title
 23 24 insurer's most recent annual statement on file with the
 23 25 commissioner including:
 23 26 (a) Direct premiums written.
 23 27 (b) Escrow and settlement service fees.
 23 28 (c) Other title fees and service charges including fees
 23 29 for closing protection letters.
 23 30 (d) Premiums for reinsurance assumed less premiums for
 23 31 reinsurance ceded during the year.
 23 32 (3) Additions to the reserve on or after January 1, 2007,
 23 33 which shall be made out of total charges for title insurance
 23 34 policies and guarantees written, equal to the sum of the
 23 35 following items, as set forth in the title insurer's most
 24 1 recent annual statement on file with the commissioner:
 24 2 (a) For each title insurance policy on a single risk
 24 3 written or assumed after January 1, 2007, twenty=five cents
 24 4 per one thousand dollars of net retained liability for
 24 5 policies under five hundred thousand dollars and twelve cents
 24 6 per one thousand dollars of net retained liability for
 24 7 policies of five hundred thousand dollars or more.
 24 8 (b) Six percent of escrow, settlement, and closing fees
 24 9 collected in contemplation of the issuance of the title
 24 10 insurance policies or guarantees.
 24 11 c. The aggregate of the amounts set aside in the statutory
 24 12 or unearned premium reserve in any calendar year pursuant to
 24 13 paragraph "b", subparagraphs (2) and (3), shall be released
 24 14 from the reserve and restored to net profits on July 1 of each
 24 15 of the following years after the year of addition over a
 24 16 period of twenty years pursuant to the following:
 24 17
 24 18
 24 19 Year Percentage of
 24 20 Year 1 35%
 24 21 Years 2 and 3 15%
 24 22 Year 4 10%
 24 23 Years 5 through 7 3%
 24 24 Years 8 through 10 2%
 24 25 Years 11 through 20 1%
 24 26 d. The insurer shall calculate an adjusted statutory or
 24 27 unearned premium reserve as of the effective date of this Act.
 24 28 The adjusted reserve shall be calculated as if paragraph "b",
 24 29 subparagraphs (2) and (3), and paragraph "c" had been in
 24 30 effect for all years beginning twenty years prior to the
 24 31 effective date of this Act. For purposes of this calculation,
 24 32 the balance of the reserve as of that date shall be deemed to
 24 33 be zero. If the adjusted reserve so calculated exceeds the
 24 34 aggregate amount set aside for statutory or unearned premiums
 24 35 in the insurer's annual statement on file with the
 25 1 commissioner on the effective date of this Act, the insurer
 25 2 shall, out of total charges for policies of title insurance,
 25 3 increase its statutory or unearned premium reserve by an
 25 4 amount equal to one=sixth of that excess in each of the
 25 5 succeeding six years, commencing with the calendar year that
 25 6 includes the effective date of this Act, until the entire
 25 7 excess has been added to the statutory or unearned premium
 25 8 reserve.
 25 9 e. The aggregate of the amounts set aside in the adjusted
 25 10 statutory or unearned premium reserve in any calendar year as
 25 11 adjustments to the insurer's statutory or unearned premium
 25 12 reserve pursuant to paragraph "d" shall be released from the
 25 13 reserve and restored to net profits or equity if the additions
 25 14 required by paragraph "b" reduce equity directly, over a
 25 15 period not exceeding ten years pursuant to the following
 25 16 table:
 25 17 Year of addition Release
 25 18 Year 1 Equally over 10 years
 25 19 Year 2 Equally over 9 years

25 20 Year 3 Equally over 8 years
 25 21 Year 4 Equally over 7 years
 25 22 Year 5 Equally over 6 years
 25 23 Year 6 Equally over 5 years
 25 24 "Year 1" means the calendar year following
 25 25 the effective date of this Act.
 25 26 3. A supplemental reserve consisting of any other reserves
 25 27 necessary, when taken in combination with the reserves
 25 28 required by subsections 1 and 2, to cover the title insurer's
 25 29 liabilities with respect to all losses, claims, and loss
 25 30 adjusted expenses.
 25 31 4. An actuarial certification by a member in good standing
 25 32 of the American academy of actuaries filed with the title
 25 33 insurer's annual statement that conforms to the national
 25 34 association of insurance commissioners' annual statement
 25 35 instructions for title insurers.
 26 1 5. The supplemental reserve required under subsection 3
 26 2 shall be phased in as follows: twenty-five percent of the
 26 3 otherwise applicable supplemental reserve will be required
 26 4 until December 31, 2006; fifty percent of the otherwise
 26 5 applicable supplemental reserve will be required until
 26 6 December 31, 2007; and, seventy-five percent of the otherwise
 26 7 applicable supplemental reserve will be required until
 26 8 December 31, 2008.
 26 9 Sec. 25. NEW SECTION. 515I.11 LIQUIDATION, DISSOLUTION,
 26 10 OR INSOLVENCY.
 26 11 1. Chapter 507C shall apply to all title insurers subject
 26 12 to this chapter, except as otherwise provided in this section.
 26 13 In applying the provisions of chapter 507C, the court shall
 26 14 consider the unique aspects of title insurance and shall have
 26 15 broad authority to fashion relief that provides for the
 26 16 maximum protection of title insurance policyholders.
 26 17 2. Security and escrow funds held by or on behalf of a
 26 18 title insurer that is subject to an order of liquidation,
 26 19 dissolution, or insolvency shall not become general assets and
 26 20 shall be administered as secured claims as defined in section
 26 21 507C.2.
 26 22 3. Title insurance policies that are in force at the time
 26 23 an order of liquidation is entered shall not be cancelled
 26 24 except upon a showing to the court of good cause by the
 26 25 receiver. The determination of good cause shall be within the
 26 26 discretion of the court. In making this determination, the
 26 27 court shall consider the unique aspects of title insurance and
 26 28 all other relevant circumstances.
 26 29 4. The court may set appropriate dates when potential
 26 30 claimants must file their claims with the receiver. The court
 26 31 may set different dates for filing claims based upon a title
 26 32 insurance policy than for filing all other claims. In setting
 26 33 dates, the court shall consider the unique aspects of title
 26 34 insurance and all other relevant circumstances.
 26 35 5. As of the date of the order of insolvency or
 27 1 liquidation of a title insurer, all premiums paid, due, or to
 27 2 become due under policies of the title insurer, shall be
 27 3 considered fully earned. It shall be the obligation of
 27 4 agents, insureds, or representatives of the title insurer to
 27 5 pay fully earned premiums to the receiver.
 27 6 Sec. 26. NEW SECTION. 515I.12 RESTRICTIONS ON DIVIDENDS.
 27 7 A title insurer shall only declare or distribute a dividend
 27 8 to shareholders without the prior written approval of the
 27 9 commissioner, as permitted under section 515.44 for insurers
 27 10 other than life insurers.
 27 11 Sec. 27. NEW SECTION. 515I.13 DIVERSIFICATION
 27 12 REQUIREMENTS.
 27 13 1. Without the prior written approval of the commissioner,
 27 14 a domestic title insurer shall not accept the following:
 27 15 a. Additional business from a title insurance agent that
 27 16 is not an affiliate of the title insurer if the business, when
 27 17 added to other business written through the title insurance
 27 18 agent during the same calendar year, provides that agent with
 27 19 aggregate premiums written on behalf of the title insurer that
 27 20 will exceed twenty percent of the title insurer's gross
 27 21 premiums written during the prior calendar year, as shown on
 27 22 the title insurer's most recent annual statement on file with
 27 23 the commissioner.
 27 24 b. Additional direct operations business from a single
 27 25 source if, when added to other direct operations business from
 27 26 the single source during the same calendar year, provides
 27 27 aggregate premiums written on the direct operations business
 27 28 of the single source that will exceed twenty percent of the
 27 29 title insurer's gross premiums written during the prior
 27 30 calendar year as shown on the title insurer's most recent

27 31 annual statement on file with the commissioner. For purposes
27 32 of this section, a "single source" means a person that refers
27 33 business to a title insurer and any other person that
27 34 controls, is controlled by, or is under common control with
27 35 that person.

28 1 2. In determining whether to grant approval under
28 2 subsection 1, the commissioner shall consider the following:

28 3 a. The potential that the acceptance of more business from
28 4 a title insurance agent or a single source may adversely
28 5 affect the financial solidity of the title insurer.

28 6 b. The availability of competing title insurance agents or
28 7 additional sources in the territories in which the title
28 8 insurer accepts risks.

28 9 c. The number of years the title insurer has been in
28 10 business.

28 11 d. Reinsurance arrangements mitigating the concentration
28 12 of business from the title insurance agent or single source.

28 13 e. The comparative profitability of the book of business
28 14 of a title insurance agent or single source.

28 15 f. The degree of oversight of the operation of the title
28 16 insurance agent or single source that is exercised by the
28 17 title insurer.

28 18 g. Any other circumstances deemed appropriate by the
28 19 commissioner.

28 20 Sec. 28. NEW SECTION. 515I.14 DIRECT OPERATIONS ==
28 21 POLICYHOLDER TREATMENT.

28 22 1. A title insurance report that includes an offer to
28 23 issue an owner's title insurance policy covering the resale of
28 24 owner-occupied residential property shall be furnished to the
28 25 purchaser-mortgagor or to the purchaser-mortgagor's
28 26 representative as soon as is reasonably possible prior to
28 27 closing. If the report cannot be delivered prior to the day
28 28 of closing, the title insurer shall document the reasons for
28 29 the delay. The report furnished to the purchaser-mortgagor
28 30 shall incorporate the following statement on the first page in
28 31 bold type:

28 32 Please read the exceptions and the terms shown or referred
28 33 to herein carefully. The exceptions are meant to provide you
28 34 with notice of matters which are not covered under the terms
28 35 of the title insurance policy and should be carefully
29 1 considered.

29 2 It is important to note that this form is not a written
29 3 representation as to the condition of title and may not list
29 4 all liens, defects, and encumbrances affecting title to the
29 5 land.

29 6 2. A title insurer issuing a lender's title insurance
29 7 policy to a mortgage=lender in conjunction with a mortgage
29 8 loan made simultaneously with the purchase of all or part of
29 9 the real estate securing the loan, where no owner's title
29 10 insurance policy has been requested, shall give written
29 11 notice, on a form prescribed or approved by the commissioner,
29 12 to the purchaser-mortgagor or to the purchaser-mortgagor's
29 13 representative that a lender's title insurance policy is being
29 14 issued, as soon as is reasonably possible prior to closing.
29 15 The notice shall explain that a lender's title insurance
29 16 policy will be issued that protects the mortgage=lender, and
29 17 that the policy does not provide title insurance protection to
29 18 the purchaser-mortgagor who is the owner of the property being
29 19 purchased. The notice shall explain what a title insurance
29 20 policy insures against and what possible exposures exist for
29 21 the purchaser-mortgagor that can be insured against through
29 22 the purchase of an owner's title insurance policy. The notice
29 23 shall also explain that the purchaser-mortgagor may obtain an
29 24 owner's title insurance policy protecting the property owner
29 25 at a specified cost or approximate cost, if the proposed
29 26 coverage or amount of insurance is not then known. A copy of
29 27 the notice signed by the purchaser-mortgagor shall be retained
29 28 in the underwriting file of the title insurer issuing the
29 29 lender's title insurance policy for at least five years after
29 30 the effective date of the policy.

29 31 Sec. 29. NEW SECTION. 515I.15 DUTIES OF TITLE INSURERS
29 32 UTILIZING THE SERVICES OF TITLE INSURANCE AGENTS.

29 33 1. A title insurer shall not accept business from a title
29 34 insurance agent unless there is a written contract between the
29 35 title insurer and the title insurance agent that sets forth
30 1 the responsibilities of each party and, where the title
30 2 insurer and the title insurance agent share responsibility for
30 3 a particular function, specifies the division of
30 4 responsibilities between them.

30 5 2. A title insurer shall, at least annually, conduct an
30 6 on-site review of the underwriting, claims, and escrow

30 7 practices of title insurance agents under contract with the
30 8 title insurer which shall include a review of the title
30 9 insurance agent's policy blank inventory and processing
30 10 operations. If a title insurance agent does not maintain
30 11 separate bank or trust accounts for each title insurer it
30 12 represents, the title insurer shall verify that the funds held
30 13 on its behalf are reasonably identifiable from the books of
30 14 account and records of the title insurance agent.

30 15 3. A title insurer shall provide written notification of
30 16 the appointment or termination and the reasons for termination
30 17 of a title insurance agent to the commissioner within thirty
30 18 days of executing a contract or terminating a contract with a
30 19 title insurance agent. Notices of the appointment or
30 20 termination of a title insurance agent shall be made on forms
30 21 prescribed or approved by the commissioner.

30 22 4. A title insurer shall not appoint to its board of
30 23 directors an officer, director, employee, or controlling
30 24 shareholder of a title insurance agent who wrote one percent
30 25 or more of the title insurer's direct premiums written during
30 26 the previous calendar year as shown on the title insurer's
30 27 most recent annual statement on file with the commissioner.

30 28 5. A title insurer shall maintain an inventory of all
30 29 policy forms or policy numbers allocated to each title
30 30 insurance agent.

30 31 6. A title insurer shall have on file proof that each
30 32 title insurance agent under contract with the title insurer is
30 33 licensed by this state.

30 34 7. A title insurer shall establish underwriting guidelines
30 35 and, where applicable, limitations on title insurance claims
31 1 settlement authority to be incorporated into contracts with
31 2 its title insurance agents.

31 3 Sec. 30. NEW SECTION. 515I.16 CONDITIONS FOR MAINTAINING
31 4 ESCROW AND SECURITY DEPOSIT ACCOUNTS.

31 5 A title insurer may operate as an escrow, security,
31 6 settlement, or closing agent, provided all of the following
31 7 apply:

31 8 1. All funds deposited with the title insurer in
31 9 connection with an escrow, settlement, closing, or security
31 10 deposit shall be submitted for collection to or deposited in a
31 11 separate fiduciary trust account or accounts in a qualified
31 12 financial institution no later than the close of the next
31 13 business day after receipt of the funds, in accordance with
31 14 all of the following requirements:

31 15 a. The funds shall be the property of the person or
31 16 persons entitled to them under the provisions of the escrow,
31 17 settlement, security deposit, or closing agreement, and shall
31 18 be segregated for each depository by designating escrow,
31 19 settlement, security deposit, or closing funds in the records
31 20 of the title insurer in a manner that permits the funds to be
31 21 identified on an individual basis.

31 22 b. The funds shall be applied only in accordance with the
31 23 terms of the individual instructions or agreements under which
31 24 the funds were accepted.

31 25 2. Funds held in an escrow account shall be disbursed only
31 26 pursuant to a written instruction or agreement specifying how
31 27 and to whom such funds may be disbursed.

31 28 3. Funds held in a security deposit account shall be
31 29 disbursed only pursuant to a written agreement specifying all
31 30 of the following:

31 31 a. What actions the indemnitor shall take to satisfy the
31 32 indemnitor's obligation under the agreement.

31 33 b. The duties of the title insurer with respect to
31 34 disbursements of the funds held, including a requirement to
31 35 maintain evidence of the disposition of a title exception
32 1 before any balance may be paid over to the depositing party or
32 2 the depositing party's designee.

32 3 c. Any other provisions the commissioner may require.

32 4 4. A disbursement may be made out of an escrow,
32 5 settlement, or closing account only if deposits in amounts at
32 6 least equal to the disbursement have first been made directly
32 7 to the account against which the disbursement will be made,
32 8 and if the deposits are in one of the following forms:

32 9 a. Cash.

32 10 b. Wire transfers such that the funds are unconditionally
32 11 received by the title insurer or the title insurer's
32 12 depository.

32 13 c. Cashier's checks, certified checks, bank money orders,
32 14 and teller's checks issued by a federally insured financial
32 15 institution and unconditionally held by the title insurer.

32 16 d. United States treasury checks, federal reserve bank
32 17 checks, federal home loan bank checks, and state of Iowa

32 18 warrants.

32 19 e. Personal checks up to one thousand dollars.

32 20 For the purposes of this subsection, "federally insured
32 21 financial institution" means an institution in which monetary
32 22 deposits are insured by the federal deposit insurance
32 23 corporation or national credit union administration.

32 24 5. If the title insurance agent is appointed by two or
32 25 more title insurers and maintains fiduciary trust accounts in
32 26 connection with providing escrow or closing settlement
32 27 services, the title insurance agent shall allow each title
32 28 insurer reasonable access to the accounts and all supporting
32 29 account information in order to ascertain the safety and
32 30 security of the funds held by the title insurance agent.

32 31 6. This chapter does not prohibit the recording of
32 32 documents prior to the time funds are available for
32 33 disbursement with respect to any transaction involving real
32 34 property.

32 35 7. This section is not intended to amend, alter, or
33 1 supersede other sections of this chapter, or the laws of this
33 2 state or the United States, regarding an escrow holder's
33 3 duties and obligations.

33 4 Sec. 31. NEW SECTION. 515I.17 FAVORED AGENT OF TITLE
33 5 INSURER.

33 6 A title insurer shall not participate in any transaction in
33 7 which a producer or other person, requires, directly or
33 8 indirectly, or through a trustee, director, officer, agent,
33 9 employee or affiliate, as a condition, agreement, or
33 10 understanding to providing, selling, or furnishing any other
33 11 person a loan, loan extension, credit, sale, property,
33 12 contract, lease, or service, that the other person must place
33 13 a title insurance policy of any kind with the title insurer or
33 14 through a particular title insurance agent.

33 15 Sec. 32. NEW SECTION. 515I.18 PREMIUM RATE FILINGS AND
33 16 STANDARDS.

33 17 1. A title insurer shall not charge any rates regulated by
33 18 the state after the effective date of this Act, except in
33 19 accordance with a premium rate schedule and manual filed with
33 20 and approved by the commissioner in accordance with applicable
33 21 statutes and regulations governing rate filings. The
33 22 commissioner may provide by regulation for interim use of
33 23 premium rate schedules in effect prior to the effective date
33 24 of this chapter.

33 25 2. The commissioner may adopt rules, including rules
33 26 providing statistical plans, for use by all title insurers and
33 27 title insurance agents in the recording and reporting of
33 28 revenue, loss, and expense experience in such form and detail
33 29 as is necessary to aid the title insurer or title insurance
33 30 agent in the establishment of rates and fees.

33 31 3. The commissioner may require that information provided
33 32 under this section be verified by the president, vice
33 33 president, secretary, or actuary of the title insurer or title
33 34 insurance agent. The commissioner may further require that
33 35 the information provided by a title insurer or title insurance
34 1 agent under this section be subject to an audit conducted by
34 2 an independent certified public accountant. The commissioner
34 3 may establish a minimum threshold level at which an audit is
34 4 required.

34 5 4. Information filed with the commissioner relating to the
34 6 revenue, loss, and expense experience of a particular title
34 7 insurance agent shall be kept confidential unless the
34 8 commissioner determines that it is in the public interest to
34 9 disclose the information.

34 10 Sec. 33. NEW SECTION. 515I.19 FORMS APPROVAL.

34 11 1. A title insurer or authorized rate service organization
34 12 shall not deliver or issue for delivery or permit any of its
34 13 authorized title insurance agents to deliver in this state,
34 14 any form, in connection with title insurance written, unless
34 15 the form has first been filed with and approved by the
34 16 commissioner or unless thirty days have elapsed since the form
34 17 was filed and the form has not been disapproved by the
34 18 commissioner as misleading or violative of public policy.

34 19 2. Forms subject to approval by the commission pursuant to
34 20 this section shall include the following:

34 21 a. Title insurance policies, including standard form
34 22 endorsements.

34 23 b. Title insurance reports issued prior to the issuance of
34 24 a title insurance policy.

34 25 3. After giving notice and the opportunity to be heard to
34 26 the title insurer or rate service organization which submitted
34 27 the form for approval, the commissioner may withdraw approval
34 28 of a form upon making a determination that use of the form is

34 29 contrary to the legal requirements applicable at the time of
 34 30 the withdrawal of approval. The effective date of the
 34 31 withdrawal of approval of a form by the commissioner shall be
 34 32 not less than ninety days after notice of the proposed
 34 33 withdrawal of approval is given.
 34 34 4. An approved policy form or endorsement providing
 34 35 coverage for which no identifiable premium is assessed shall
 35 1 be incorporated into every applicable title insurance policy.
 35 2 The title insurer shall disclose any additional coverage to
 35 3 the insured. The provisions of this section shall not operate
 35 4 to eliminate any underwriting standard or conditions relating
 35 5 to the approved policy forms or endorsements.
 35 6 5. A term or condition related to insurance coverage
 35 7 provided by an approved title insurance policy or an exception
 35 8 to the coverage, except those ascertained from a search and
 35 9 examination of records relating to a title or inspection or
 35 10 survey of a property to be insured, shall not be included in a
 35 11 title insurance policy until the term, condition, or exception
 35 12 has been filed with and approved by the commissioner.
 35 13 Sec. 34. NEW SECTION. 515I.20 FILING BY RATING BUREAUS.
 35 14 1. A title insurer or title insurance agent may satisfy
 35 15 its obligation to file premium rates, rating manuals, and
 35 16 forms as required by this chapter by becoming a member of, or
 35 17 a subscriber to, a rate service organization, organized and
 35 18 licensed under the provisions of this code, that makes the
 35 19 required filings on behalf of the title insurer or title
 35 20 insurance agent, and by authorizing the commissioner in
 35 21 writing to accept the filings made on behalf of the title
 35 22 insurer or title insurance agent.
 35 23 2. This chapter shall not be construed to require a title
 35 24 insurer or title insurance agent to become a member of, or a
 35 25 subscriber to, a rate service organization. This chapter
 35 26 shall not be construed to prohibit a member or subscriber of a
 35 27 rate service organization from filing deviations from rate
 35 28 service organization filings.
 35 29 Sec. 35. NEW SECTION. 515I.21 RECORD RETENTION
 35 30 REQUIREMENTS.
 35 31 A title insurer shall retain and preserve evidence of title
 35 32 examinations and determinations of insurability for business
 35 33 written, and records relating to escrow and security deposits
 35 34 for as long as is appropriate under the circumstances but in
 35 35 no event less than three years after the title insurance
 36 1 policy is issued or three years after the escrow or security
 36 2 deposit account is closed. This section shall not apply to a
 36 3 title insurer acting as a coinsurer if one of the other
 36 4 coinsurers has complied with this section.
 36 5 Sec. 36. NEW SECTION. 515I.22 RULES AND ORDERS.
 36 6 The commissioner may adopt rules pursuant to chapter 17A
 36 7 and issue orders as may be necessary for the effective
 36 8 administration of this chapter.
 36 9 Sec. 37. NEW SECTION. 515I.23 PENALTIES AND LIABILITIES.
 36 10 1. If the commissioner determines that a title insurer or
 36 11 any other person has violated this chapter, or any rule
 36 12 adopted pursuant to this chapter, or any order issued under
 36 13 this chapter, after notice and opportunity to be heard, the
 36 14 commissioner may order the following:
 36 15 a. A penalty not exceeding one hundred dollars for each
 36 16 violation.
 36 17 b. Revocation or suspension of the title insurer's
 36 18 license.
 36 19 2. This section shall not affect the right of the
 36 20 commissioner to impose any other penalties provided for in the
 36 21 insurance code.
 36 22 3. This chapter is not intended to and shall not in any
 36 23 manner limit or restrict the rights of policyholders,
 36 24 claimants, and creditors.
 36 25 Sec. 38. NEW SECTION. 515I.24 VIOLATIONS OF THE REAL
 36 26 ESTATE SETTLEMENT PROCEDURES ACT.
 36 27 The commissioner or attorney general may bring an action in
 36 28 a court of competent jurisdiction to enjoin violations of the
 36 29 federal Real Estate Settlement Procedures Act, 12 U.S.C. }
 36 30 2607, et seq.
 36 31 Sec. 39. Section 22.7, Code 2005, is amended by adding the
 36 32 following new subsection:
 36 33 NEW SUBSECTION. 51. Information filed with the
 36 34 commissioner of insurance pursuant to section 515I.18 relating
 36 35 to the revenue, loss, and expense experience of a particular
 37 1 title insurance agent except if the commissioner of insurance
 37 2 determines that disclosure of the information is in the public
 37 3 interest.
 37 4 Sec. 40. Section 515.48, subsection 10, Code 2005, is

37 5 amended to read as follows:

37 6 10. Insure any additional risk not specifically included
37 7 within any of the foregoing classes, which is a proper subject
37 8 for insurance, is not prohibited by law or contrary to sound
37 9 public policy, and which, after public notice and hearing, is
37 10 specifically approved by the commissioner of insurance, ~~except~~
~~37 11 title insurance or insurance against loss or damage by reason~~
~~37 12 of defective title, encumbrances or otherwise.~~ When such
37 13 additional kind of insurance is approved by the commissioner,
37 14 the commissioner shall designate within which classification
37 15 of risks provided for in section 515.49 it shall fall.

37 16 Sec. 41. Section 535.8, subsection 2, paragraph b,
37 17 subparagraph (10), Code 2005, is amended to read as follows:

37 18 (10) The cost of a title guaranty issued by the Iowa
37 19 finance authority pursuant to chapter 16 or the cost of title
37 20 insurance.

37 21 Sec. 42. EFFECTIVE AND APPLICABILITY DATES. This Act,
37 22 being deemed of immediate importance, takes effect upon
37 23 enactment and applies to all transactions entered into on or
37 24 after the effective date, except for the following:
37 25 1. If the paid-up capital and surplus requirements for a
37 26 title insurer prior to the effective date of this Act are less
37 27 than the paid-up capital and surplus requirements of chapter
37 28 515I, a title insurer shall have two years after the effective
37 29 date of this Act to comply with those requirements.
37 30 2. Section 515I.10, as enacted in this Act, provides for a
37 31 multiyear compliance period during which requisite reserves
37 32 must be established.

37 33 EXPLANATION

37 34 This bill authorizes the sale of title insurance in this
37 35 state and regulates title insurance agents and title insurers.

38 1 The bill creates a new Code chapter 515H in the insurance
38 2 code entitled the "Iowa Title Insurance Agents Act". The bill
38 3 provides for the licensing, regulation, and supervision of the
38 4 sale by agents of title insurance in Iowa. The bill sets
38 5 forth the requirements for contracts between title insurers
38 6 and title insurance agents, conditions for providing escrow,
38 7 closing, or settlement services, record and reporting
38 8 requirements, and provides penalties for violations of this
38 9 Code chapter or any related regulation or order.

38 10 The bill also creates a new Code chapter 515I in the
38 11 insurance code entitled the "Iowa Title Insurers Act". The
38 12 bill provides for the regulation and supervision of title
38 13 insurance and insurers licensed to write title insurance in
38 14 the state by the commissioner of insurance.

38 15 The bill sets forth the authorized activities of title
38 16 insurers and limitation of powers and specifies the paid-up
38 17 capital and surplus, admitted asset standards, and reserve
38 18 requirements for a title insurer. The bill also sets forth
38 19 procedures for liquidation, dissolution, or insolvency of a
38 20 title insurer.

38 21 The bill sets forth diversification requirements, standards
38 22 for policyholder treatment, duties for utilizing title
38 23 insurance agents by title insurers, conditions for maintaining
38 24 escrow and security deposit accounts, prohibitions relating to
38 25 referrals or favored agents of a title insurer, premium rate
38 26 filing standards, and requirements for the approval of forms
38 27 used by title insurers.

38 28 The bill provides for the satisfaction of some obligations
38 29 of a title insurer by membership or subscription in a rate
38 30 service organization. The bill also sets forth record
38 31 retention requirements and provides penalties and liabilities
38 32 for violations of this Code chapter or any related regulation
38 33 or order.

38 34 The bill amends Code section 515.48 to permit the sale of
38 35 title insurance or insurance against loss or damage by reason
39 1 of defective title, encumbrances, or otherwise.

39 2 The bill also amends Code section 535.8 to allow a lender
39 3 to collect the cost of title insurance which is incurred by
39 4 the lender in connection with a residential real estate loan
39 5 if the cost of the title insurance is disclosed to the
39 6 borrower.

39 7 The bill takes effect upon enactment and applies to all
39 8 transactions entered into on or after the effective date
39 9 except that if the paid-up capital and surplus requirements
39 10 for a title insurer prior to the effective date are less than
39 11 the requirements of new Code chapter 515I, a title insurer has
39 12 two years after the bill's effective date to comply with those
39 13 requirements. The bill also provides for a multiyear
39 14 compliance period during which required reserves must be
39 15 established.

39 16 LSB 3036SC 81
39 17 av:rj/pj/5